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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,805	12/31/2001	Robert L. Popp	KCC 4773 (K.C. No. 17,181)	2929
321	7590	09/08/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/038,805	POPP ET AL.
	Examiner	Art Unit
	Michael G. Bogart	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 June 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-8, 10-18 and 20-29 is/are pending in the application.  
 4a) Of the above claim(s) 14, 15, 17, 18, 20, 21 and 24 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-8, 10-13, 16, 22, 23 and 25-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 31 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-8, 10-13, 16, 22, 23 and 25-29 are rejected under 35 U.S.C. § 102(e) as being anticipated by Popp *et al.* (USPAP 2002/0173767 A1)

The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. § 102(e). This rejection under 35 U.S.C. § 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 2, 5-7 and 27, Popp *et al.* teach a garment (20) for personal wear, comprising:

a body (32) having first and second end regions (22, 24);

a mechanical fastening system (80) disposed on the body (32), the mechanical fastening system (80) comprising:

a multi-directional stretchable loop fastening component (84, 85) disposed in the first end region (22) of the body (32), said loop fastening component (84, 85) comprising a nonwoven loop material secured to an elastomeric substrate (34), said loop fastening component (84, 85) being extensible during use in first and second substantially perpendicular directions (48, 49) generally within the plane of said loop fastening component (84, 85) and being elastomeric during use in at least one of said first and second directions, and

a hook fastening component (82, 83) disposed in the second end region (24) of the garment body (32) and comprising a hook material adapted to refastenably engage the multi-directional stretchable loop fastening component (82, 83);

wherein the loop fastening component (84, 85) and the hook fastening component (82, 83) inherently provide shear strength values of less than 3900 grams in each of said first and second directions (¶'s 0101, 0102, 0107 and 0116)(see fig. 2, below).

Regarding the multidirectional stretchability of the loop fastening component (82, 83), Popp *et al.* teach that the elastic material of the side panels (34, 134) may be comprised of materials which are inherently stretchable in multiple directions (¶'s 0017-0019, 0025, 0026, 0099 and 0100). In ¶ 0099, the reference specifically mentions that the panels are stretchable in a direction transverse to the longitudinal axis of the article, while it is silent as to stretchability in other directions. It does not indicate, however, that the panels are not stretchable in other directions, or that such a lack of stretchability is contemplated or desirable. The materials cited as being appropriate for providing the side panels are generally stretchable in all planar directions (see ¶ 0099 which incorporates by reference Van Gompel *et al.* US 4,490,464, which discloses side panels which comprise material which is elastic in all directions at column 4, line

54-64). In order to limit stretchability in a planar direction for most of these materials, an additional step must be taken, such as adding a resilient, stretch resistant material extending in the planar direction in which stretchability is to be eliminated. There is no suggestion in the reference that such an extra step for preventing stretchability in a planar direction is desirable. It is the interpretation of the Examiner, that taken as a whole, the reference teaches side panels which are constructed of materials which are elastic in all planar directions.

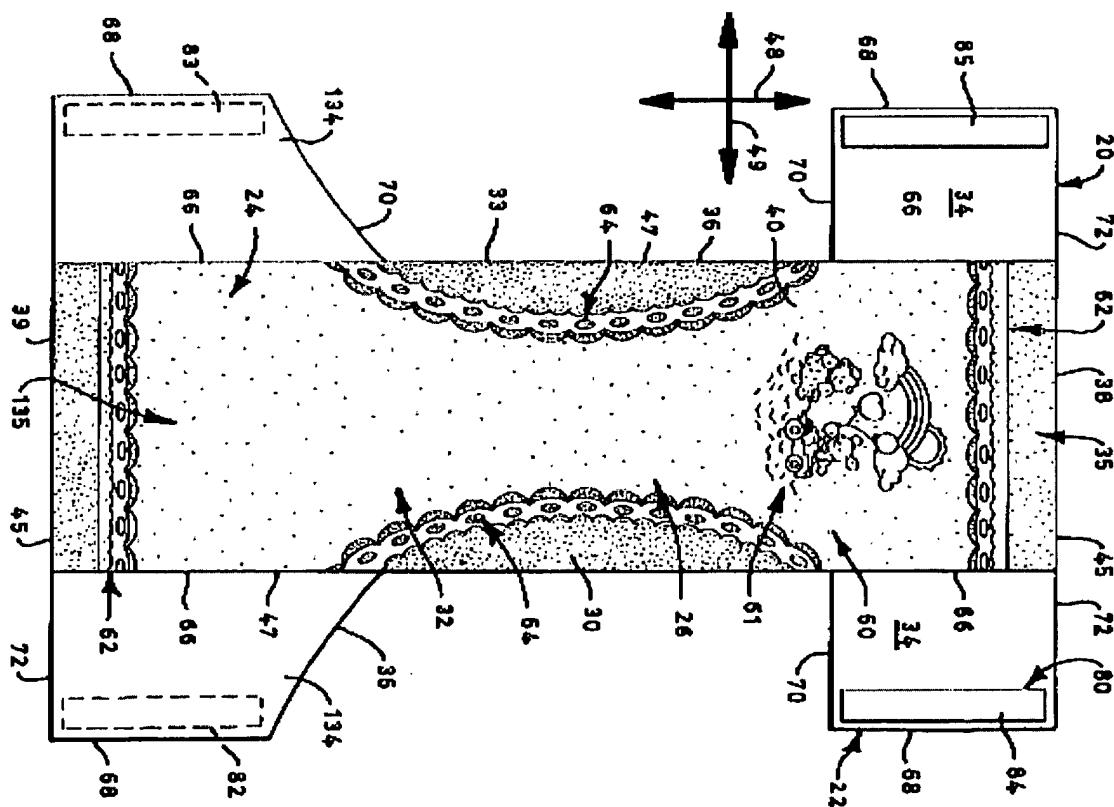


FIG. 2

Further regarding the multidirectional stretchability and extensibility of the combined loop material and elastic substrate, Popp *et al.* teaches that the loop material itself is a nonwoven material that is inherently extensible because it is a rather loosely put together matt of fibrous materials which will extend when a lateral force is applied and the component fibers tighten up (¶ 0103, incorporating by reference, Stokes *et al.*, (US 5,585,515 A)). Given the extensibility

and generally low level resilience of such a nonwoven material, when combined with an elastic substrate such as that of the side panels (34, 134) of Popp *et al.*, the combined structure is stretchable in all planar directions.

The garment of Popp *et al.* is considered to inherently perform the claimed test characteristics because it recites identical components from which the fastening system of the instant may be constructed. For example, Popp *et al.* at ¶ 0104 recite hook type fasteners which are the same make and model number as that identified by the present invention at page 22, lines 3-20 as being suitable to meet the performance criteria of the invention. Popp *et al.* ¶'s 0106 and 0108 show that the loop material is the same shape, size and is located at exactly the same position on the garment as that of the present invention indicates at page 23, lines 3-30. Popp *et al.* ¶'s 0099 and 0107 show that the landing members, which can be of the same material as that of the side panels, is composed of materials indicated by the present invention as suitable for landing members at page 26, line 17-page 32, line 19. Popp *et al.* therefor expressly teach the claimed invention except for the properties exhibited when it is subjected to certain tests. The claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claim 3, Popp *et al.* teach multi-directional stretchable loop fastening component comprising a nonwoven web stretch bonded to an elastomeric film (¶'s 0099 and 0107).

Regarding claim 4, Popp *et al.* teach a multi-directional stretchable loop fastening component comprising a mechanically restrained composite (¶'s 0099 and 0107).

Regarding claim 8, Popp *et al.* teach a hook material (e.g., polypropylene) that is inherently stretchable to same degree (¶ 0104).

Regarding claims 10-12, 22 and 23, Popp *et al.* teach a disposable absorbent article (20) for personal wear, comprising: a body (32) having first and second end regions (22, 24) and comprising a liquid permeable inner layer (42), an outer layer (40) in opposed relation with the inner layer (42), and an absorbent layer (44) disposed between the inner layer (42) and the outer layer (40); a mechanical fastening system (80) disposed on the body (32), the mechanical fastening system (80) comprising: a multi-directional loop fastening component (84, 85) disposed in the first end region (22) and comprising a multi-directional stretchable loop material, the multi-directional stretchable loop fastening component being extensible during use in first and second substantially perpendicular directions and being elastomeric during use in at least one of the first and second directions, and a closure member disposed (82, 83) in the second end (24) region and comprising a hook material adapted to refastenably engage the multi-directional stretchable loop fastening component; wherein the multi-directional stretchable landing member (84, 85) and closure member (82, 83) inherently provide shear strength values of less than 3900, 3500, 3000 or 2500 grams in each of the first and second directions (¶'s 0101, 0102, 0107 and 0116)(fig. 2)(see discussion of claim 27, above).

Regarding claim 13, Popp *et al.* teach that the multi-directional stretchable loop fastening component (84, 85) comprises a neck-stretched elastic laminate (NBL)(¶'s 0099 and 0107).

Regarding claims 16 and 25, Popp *et al.* teach that the loop fastening component (84, 85) comprises side panels of the body (32)(¶ 0107).

Regarding claims 28 and 29, Popp *et al.* teach a liquid pervious inner layer (42), an opposed outer layer (40), and an absorbent layer (44) therebetween. As for the specifically claimed range of shear strength values, see the above discussion of inherency under claim 27.

Regarding claim 26, Popp *et al.* teach a hook fastening component (e.g., polypropylene) that is inherently stretchable to same degree (¶ 0104).

***Response to Arguments***

Applicant's arguments filed 03 June 2004 have been fully considered but they are not persuasive.

Applicants assert that Popp *et al.* disclose stretch material for the loop fastening component (loop material attached to side panels) are single direction stretch materials and do not stretch in two different perpendicular directions. Applicants further assert that the references which Popp *et al.* incorporates by reference as disclosing suitable stretch material, only disclose single direction stretchable composites.

This argument is not persuasive for the reasons described in detail above in the rejection of claim 27. Popp *et al.* specifically cite Van Gompel *et al.* as teaching stretchable materials which are suitable for use as the side panels of the article of Popp *et al.* Van Gompel *et al.* at column 4, lines 54-64 show side panels constructed of materials which are elastic in all directions. Popp *et al.* does not cite any additional structure which would limit the stretchability of the side panels to just one direction, nor does it disclose any reason to do so. Without such a teaching, Popp *et al.* are reasonably construed as citing the stretchable material of Van Gompel *et al.* as is, without further modification.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached Monday-Friday.

In the event the examiner is not available, the examiner's supervisor, Larry Schwartz may be reached at phone number (703) 308-1412. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 746-3380 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.

Art Unit: 3761



Michael Bogart  
2 September 2004



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700